

**Before the  
Federal Communication Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993</b>	)	<b>WT Docket No. 02-379</b>
	)	
<b>Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services</b>	) )	

**Comments Of:  
Fred Williamson and Associates, Inc. ("FW&A")  
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC  
H&B Telephone Communications, Inc., a Kansas ILEC  
Moundridge Telephone Company, Inc., a Kansas ILEC  
Pine Telephone Company, Inc., an Oklahoma ILEC  
Pioneer Telephone Association, Inc., a Kansas ILEC  
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC  
Twin Valley Telephone, Inc., a Kansas ILEC**

### ***Background***

In this proceeding, the Commission seeks comment on wireless issues in rural areas.

Specifically, the Commission requests information on:

1. How best to determine whether competition has developed successfully in rural areas. Is there meaningful competition among mobile providers?
2. What geographic area(s) constitute rural?
3. The extent of competition between mobile and wireline service providers.
  - a) The number of mobile customers that do not subscribe to residential wireline service.
  - b) The percentage of customers' total voice communication minutes that are made from mobile phones.
  - c) The percentage of customers' total monthly long distance minutes that are made from mobile phones.
  - d) The percentage of calls in the home that are made from mobile phones.
  - e) The percentage of mobile and wireline calls and minutes that terminate on mobile phones.
  - f) Demographic data on groups of customers that have allocated a substantial portion of their voice communication to mobile service.
  - g) The effect of mobile service on the operational and financial results of wireline companies including a decrease in residential lines, a decrease in long distance revenues and a decline in payphone revenues.

Fred Williamson and Associates (FW&A) represents a number of small wireline Incumbent Local Exchange Carriers (ILECs) that operate in rural areas of Kansas and

Oklahoma. Mobile or Cellular Mobile Radio Service (CMRS) providers provide service in these areas and compete with the rural ILECs. Consequently, although FW&A cannot answer all of the questions presented by the Commission about rural CMRS service, it can provide information about CMRS service in rural areas from a perspective of rural wireline ILECs.

**1. Competition Among Rural CMRS Providers**

FW&A has not compiled evidence regarding the extent of rate or pricing competition among CMRS providers serving rural areas. However, competitive evidence does exist in terms of the geographic coverage areas of wireless carriers. FW&A has performed an analysis of the CMRS provider coverage areas in Oklahoma to determine the number of wireless that serve the exchanges of the ILECs represented by FW&A. All of the rural areas for the Kansas and Oklahoma ILECs represented by FW&A are currently served by multiple CMRS providers. In Oklahoma, on the average, there are five wireless carriers providing service in Chouteau's exchanges, two wireless carriers providing service in Pine's exchanges and four wireless carriers providing service in Totah's exchanges. In Kansas, on the average, there are three wireless carriers providing service in H&B's exchanges, five wireless carriers providing service in Moundridge's exchanges, over two wireless carriers providing service in Pioneer's exchanges, three wireless carriers providing service in Totah's exchanges and two wireless carriers providing service in Twin Valley's exchanges. Attachments 1 and 2 provide a picture of the Oklahoma and Kansas coverage area for each of these wireless carriers. Attachments 3 and 4 provide specific information as to the number of wireless carriers serving each wire center of the ILECs represented by FW&A in Oklahoma and Kansas. It appears to FW&A, based on

this analysis, that there is sufficient geographic competition among wireless providers in most of the exchanges of the ILECs represented by FW&A, where the customer density is less than five customers per square mile.

The Commission should adopt a policy of allowing CMRS competition to develop as the marketplace dictates, without regulatory intervention to force uneconomic competition into rural sparsely populated areas. CMRS providers are serving these areas already without the demonstrated requirement for unneeded incentives, such as universal service funding. The Commission requests that commenters present additional questions or information that may, or should be evaluated in this proceeding.<sup>1</sup> Based on the wireless competition that exists now in rural areas, FW&A believes that the Commission should evaluate universal service funding issues involving CMRS providers:

- Is universal service funding necessary for CMRS providers in areas with two or more wireless carriers that serve a rural universal service area<sup>2</sup>?
- Is it in the public interest to provide funding to these wireless providers when the fund size is growing and multiple CMRS providers already serve an area? Does that funding contribute to the public interest and consumer welfare?
- Should universal service funding be limited to rural universal service areas where only one wireless provider is providing service?
- If more than one wireless provider is providing service in a rural universal service area, these wireless providers apparently can compete effectively among themselves and with the rural wireline provider without receiving universal

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<sup>1</sup> NOI, paragraph 55.

<sup>2</sup> By rural universal service area, FW&A means an area served by a rural telephone company for which universal service funding is received on a disaggregated basis or for the entire rural telephone company service area.

service funding. Is this because their rates and prices are not constrained to a just and reasonable rate for residential and business service as compared to the wireline carrier whose rates are constrained? Is this because wireless carriers are not required to sustain the costs incurred by the wireline carrier to insure Carrier of Last Resort (COLR) service, meet quality of service (QoS) objectives, etc?

- The wireline carriers' need for support is demonstrated based on costs. Where more than one wireless carrier serves rural universal service areas, should all wireless carriers serving these areas be required to demonstrate a need for universal service funding, if requested?

## **2. Definition of Rural Service Area**

The Commission requests comment on the geographic area that constitutes rural. FW&A does not believe that the definitions that are proposed in the Notice of Inquiry (NOI) are specific enough to focus on rural areas and the requirements for providing service in those areas. Population density is usually utilized to define ruralness, not aggregations such as RSA or economic characteristics such as nodal versus non-nodal. One NOI definition does define rural in terms of density (counties with less than 100 persons per square mile), but that definition is inadequate to examine true rural areas such as those served by the ILECs represented by FW&A. Midsize communities that are not considered rural in either Kansas or Oklahoma are included in the counties with 100 persons per square mile. The average population density in those rural service areas and counties served by the ILECs represented by FW&A is less than 5 customers per square mile, substantially less than the 100 persons per square mile suggested by the NOI. If

the Commission wishes to focus on true rural areas, and not rural areas that contain midsize communities, it should consider using a population density per county of less than 25 persons per square mile.

With regard to comparisons and evaluations of wireless with rural wireline telephone companies, the Commission needs to utilize a definition of rural that is consistent with how the Commission defines rural for wireline telephone companies. That definition, as used in the Communications Act is:

RURAL TELEPHONE COMPANY – The term “rural telephone Company” means a local exchange carrier operating entity to the extent that such entity—

(A) Provides common carrier service to any local exchange carrier study area that does not include either—

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) Has less than 15 percent of its access lines in communities of more than 50,000 lines on the date of enactment of the Telecommunications Act of 1996.

Unless rural is defined consistently for both wireline and wireless, the analysis requested in the NOI, paragraph 53 to 55, as it applies to rural wireline areas, is likely to be meaningless.

### **3. Effects of Competition Between Wireline and CMRS Providers**

The following competitive effects on the Wireline ILECs represented by FW&A are noted:

a) Residential access lines are declining. A portion of the decline is attributable to purchase of DSL service and disconnection of second lines. A portion of the decline, however, is due to customers utilizing wireless service as the primary residential service. FW&A has not performed a survey or analysis to determine the extent of the decline in lines due to wireless.

b) Toll and therefore access revenues are declining, in part due to customers' use of wireless instead of wireline toll services. This decline directly converts to a loss in access revenues for the rural ILECs and again substantiates that there is substantive wireless competition, even in the most rural areas. The decline in toll and thus originating access for the clients represented by FW&A ranges from a low of eight percent to a high of thirty five percent.

c) An unintended consequence of differing local calling areas for wireless providers (MTA) and wireline providers (franchised local calling areas) may result in revenue losses for wireline providers. As shown on Attachment 5 for Kansas, MTAs typically are substantially larger than the existing franchised ILEC local calling areas. Thus, a significant portion of what is typically toll calling, is instead local for traffic

originating from wireless providers. In intercarrier compensation proceedings, certain state commissions have interpreted (inappropriately in view of the Commissions requirements<sup>3</sup>) that the Commission's wireless local calling area (intra-MTA) also applies to all presubscribed toll traffic originated by wireline Interexchange carriers utilizing the ILEC's network that is terminated to a CMRS provider's network. If such traffic is inappropriately treated as local:

- Consumers lose the competitive choice of a presubscribed carrier, at odds with the presubscription requirements in the Commission's rules and the Act.
- Rural LECs lose access compensation from the IXC's and are forced to pay terminating compensation to the CMRS providers as well as any transport costs even though the rural LEC is not the retail provider for the calls and has no revenue for the calls. To recover these losses, consumers would experience an increase in their local rates (currently estimated to be approximately \$2.50 per month in Oklahoma) to recover the costs of inappropriately treating these interexchange calls as local for interconnection purposes.

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<sup>3</sup> CC Docket Nos. 96-98 and 95-185, First Report and Order, Paragraphs 1034 and 1043. In these paragraphs, the Commission explains that traffic that originates and terminates within the same MTA is local and subject to reciprocal compensation, unless the traffic is IXC's long distance (ILEC access traffic) where the IXC originates and carries calls between a LEC network and a CMRS provider's network. In para. 1034, the FCC explains that the originating carrier is responsible for terminating payments or reciprocal compensation for this traffic when the customer pays the originating carrier for its services. As the FCC's Order contemplates, the IXC is the originating carrier that receives revenue from the customer to originate, transport and complete the call. The IXC is responsible for terminating compensation. Nowhere in the FCC's First Report and Order does the FCC state or indicate that the underlying ILEC access provider, which simply provides the facilities to allow the IXC originating carrier to originate its customers calls and receives no compensation from the originating customer, is responsible for terminating compensation.



- IXC's lose toll revenue and are placed at a competitive disadvantage because the local calling area of the rural LEC is inappropriately expanded, only for CMRS calling.
- CMRS providers would receive an anti-competitive advantage vis-à-vis the IXC's. CMRS providers are not harmed by appropriately classifying this traffic as IXC interexchange traffic. They receive terminating compensation from the IXC that has the retail consumer revenues.

To remedy this situation that harms rural ILECs and their customers, the Commission must clarify its intercarrier compensation policies to insure that rural ILECs are not required to treat presubscribed interexchange traffic terminating to wireless providers as local traffic.

d) Current FCC policies are putting at risk the sustainability of universally available service with just and reasonable rate levels in rural ILEC service areas throughout the country. At odds with the competitive neutrality requirements of the Communications Act, current FCC policies result in asymmetric requirements that provide a universal service funding preference for wireless carriers. For instance:

- No just, reasonable and affordable rate level is established for wireless carriers. Consequently, wireless carriers can charge whatever rates they desire and still qualify for universal service funding.
- Unlike ILECs, wireless carriers are not required to demonstrate a need for universal service funding support. Their support is based on ILEC costs and not a demonstrated need based on their costs.
- Wireless carriers are not held to quality of service requirements, as are ILECs. Consequently, wireless carriers can provide inadequate service (dead spots, spotty and inadequate signal, dropped calls, etc.) and still qualify for universal service support.

- Wireless carriers are not, as are ILECs, required to provide equal access to toll carriers.
- Wireless carriers are not required to serve as a Carrier of Last Resort (COLR) for all customers in the universal service area.

This asymmetry puts the ILECs at a competitive disadvantage and causes an inappropriate loss of universal service funding that is essential to the ILEC provision of universally available service at reasonable and affordable rates in rural areas. Loss of funding to wireless carriers means that ILECs will have less funding to provide the quality universal services at reasonable rate levels, as required by the Act. The asymmetry also causes excessive growth in both Federal and State universal service funding because wireless carriers will receive funding even though they have not, as have ILECs, demonstrated a need for funding and do not meet the eligibility criteria imposed on the ILECs. Further, as wireless carriers serve lines previously served by the ILEC, the ILEC's cost per line will increase and this change will further increase funding requirements, perhaps providing false economic signals for further uneconomic wireless entry.

Wireless carriers are allowed to receive publicly provided support with essentially no regulatory oversight. This is not what the Communications Act envisioned. The Act in Section 332(c), does not allow Commissions to regulate the rates and entry of cellular carriers. However, if these carriers seek to be eligible for universal service support, cellular carriers, like all local exchange carriers, are subject to the Act's universal service provisions in Section 214(e) and Section 254, that require all carriers, on a competitively neutral basis, to meet requirements established by Federal and State Commissions in order to receive universal service funding. Cellular carriers must not be allowed to avoid their universal service responsibilities by claiming that Section 332(c) of the Act prohibits rate and entry regulations and thus Commissions, both Federal and State, may not regulate their universal service offerings. This is a mis-reading of the Act's provisions.

In order to benefit the public, and to insure competitive neutral provision of universal service funding, universal service requirements applicable to all carriers (both ILEC and

wireless) must include (a) Reasonable rate levels with a specified number of free local minutes and similar local calling scopes, (b) Adherence to quality of service standards established by State Commissions, (c) Provision of equal access to toll carriers, (d) Demonstration of a need for the funding, based on the competitor's costs, not the costs of the ILECs and (e) A requirement to serve as a carrier of last resort.

FW&A hopes to file additional comments and information in the Reply Comments in this proceeding.

Respectfully submitted on behalf of the ILECs by,

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